

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for October 29, 2003 PLANNING COMMISSION MEETING

P.A.S.: Special Permit #2039

PROPOSAL: A special permit to allow the sale of alcohol for consumption off the premises.

LOCATION: 5240 South 48th Street

CONCLUSION: The proposed mitigation plan includes several components that combine to provide adequate mitigation at this location. These include locating the area where alcohol is stored and the entrance door more than 100' from the adjacent residential district, limiting the sale of alcohol between 6:00 a.m. to 10:00 p.m, and screening between this and the adjacent residential properties. The territory supervising manager, general store manger and any other supervisor assigned to this store will take the Hospitality Council training program.

<u>RECOMMENDATION:</u>	Conditional Approval
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GENERAL INFORMATION:

LEGAL DESCRIPTION: Lot 1 and the remaining portion of Lot 2, Block 5, Woodland Terrace, Lincoln, Lancaster County, Nebraska.

EXISTING ZONING: B-1 Local Business

EXISTING LAND USE: Commercial

SURROUNDING LAND USE AND ZONING:

North	Commercial	B-1
South	Open Space/Highway 2	
East	Single-family Residential	R-2
West	Commercial/Office	R-1, B-1

COMPREHENSIVE PLAN SPECIFICATIONS: The Comprehensive Plan designates Urban Residential land uses for this site.

HISTORY: CZ#2873 - Approved **February 3, 1995**, changed the zoning on this site from R-2 to B-1.

Converted from A-2 Single-family to R-2 Residential with the approval of the 1979 Zoning Update.

ANALYSIS:

OVERVIEW:

This is the site of a former restaurant which has been demolished. A new facility containing a convenience store, a take-out restaurant, and a service station is under construction. This request is for a special permit to allow the sale of alcoholic beverages for consumption off the premises for the convenience store only.

The site is bounded by R-2 on the east, B-1 to the north, B-1 and R-1 to the west across South 48th Street (the R-1 is a parking lot by special permit), and R-2 to the south which is Highway 2 right-of-way and is only zoned for mapping purposes. The licensed premises (the point from which the 100' separation is measured) maintains a 100' separation to the west and south, but is less than 100' to the R-2 to the east. The term 'licensed premises' is a reference to the State liquor license which defines the area where alcohol can be stored, sold or consumed.

The site plan shows approximately two-thirds of the convenience store falling within the 100' separation - approximately one-third of the store, or the west 16', is more than 100' away.

1. SPECIAL PERMIT REQUIREMENTS PER LINCOLN MUNICIPAL CODE (LMC)

27.63.685: Alcoholic beverages may be sold for consumption off the premises in the B-1, B-3, H-1, H-2, H-3, H-4, I-1 and I-3 zoning districts upon the approval of a special permit. A special permit for such use may be granted subject to the requirements of the respective districts, all applicable ordinances, and the following conditions, which may be waived by the City Council:

(a) Parking shall be in accordance with LMC Section 27.67.020.

The parking lot on this site is to be paved. The number of spaces to be provided must comply with the requirements of Lincoln Municipal Code (LMC) based upon uses, and will be reviewed at the time of building permits.

(b) The sale of alcoholic beverages for consumption on the premises shall not be permitted without issuance of a permit under LMC Section 27.63.680 of this code.

The sale of alcohol for consumption on the premises has not been proposed, and a special permit to allow it has not been requested.

(c) The licensed premises of any building approved for such activity must be located no closer than 100 feet from a day care facility, a residential district or residential use, or, if a lesser distance, must mitigate any adverse effects of the reduction in distance through landscaping, screening, or other methods approved by the Planning Director.

The premises is located closer than 100' to a residential district, adjacent to the east. To mitigate the lack of separation, the applicant has prepared a mitigation plan as part of the application.

Key components of the plan include:

1. This building is unique in that the western 16' of the building is more than 100' from the adjacent R-2. The applicant is proposing to locate the alcohol display cases and the entrance door in this part of the store. This is similar to a previous special permit where the entire building did not maintain an adequate separation, but where the licensed premises was confined to a portion of the building that did provide 100' of separation. The internal barrier was provided by an interior wall. In this instance however, the applicant is not proposing to build an interior wall for separation.

The entrance door and the interior layout of the convenience store generally confine the areas where alcohol will be handled to those that are more than 100' away from the R-2. There are two exceptions. One will be at the time of time purchase, as the cashier island is located in a part of the store that is less than 100' from R-2. The other is when customers are shopping for other items or leave the store to get in their vehicles.

2. A screen consisting of a 6'-high cedar privacy fence at the east property line along with nine new trees being planted is shown. It is noted that in the second paragraph of Section 3 of the mitigation plan that a 6'-4" high fence is to be constructed. However, a 6' high fence is the maximum allowed and the plan must be revised to state this. The plan goes on to discuss the applicant's willingness to construct an 8' high fence. However, it is correctly noted that it exceeds the maximum height allowed in this zoning district, and would require a waiver from the Board of Zoning Appeals to be allowed.

3. Nine trees are shown being planted along the east property line. To enhance the screening effect, a 50-50 mix of evergreen and deciduous trees would provide better year-around screening. Also, planting larger trees to

begin with will provide immediate screening. The size of the trees being planted should be a minimum of 2 1/2" caliper.

4. The plan notes that lighting has been designed to focus light under the gasoline island canopy to minimize the amount of fugitive light spilling onto adjacent properties. Canopy lights are not subject to parking lot lighting design standards - but for this site they should be. The mitigation plan must be revised to state that the canopy lights will be installed to comply with the parking lot design standards for lighting to ensure that light is contained on site to the extent required by Design Standards.

(d) Any lighting on the property shall be designed and erected in accordance with all applicable lighting regulations and requirements.

Parking lot lighting must comply with the applicable City of Lincoln Design Standards for parking lots. As noted above, the mitigation plan notes that caution has been used in the placement of lighting under the gas pump canopy to focus the light where it is needed and away from adjacent properties, but they should also be subject to the Design Standards.

(e) Vehicle stacking for a drive-through window used as any part of the permitted business operation shall not be located in any required building setback from a residential district.

A drive-through window is not being proposed in conjunction with this facility or with the sale of alcohol.

(f) The use shall not have any amplified outside sound or noise source, including bells, buzzers, pagers, microphones, or speakers within 150 feet of any residential district. This shall not apply to sound sources audible only to the individual to whom they are directed, such as personal pagers, beepers, or telephones.

No such devices are proposed with this special permit.

(g) No access door to the business, including loading or unloading doors, shall face any residential district if such doors are within 150 feet of the residential district. This shall not apply to emergency exit doors required by building or safety codes. No door facing a residential district shall be kept open during the operation of the establishment.

The entrance door to the convenience store faces south and does not face a residential district.

(h) Vehicular ingress and egress to and from the property shall be designed to avoid, to the fullest extent possible as determined by the City Council, disruption of any residential district. Particular attention shall be given to avoiding designs that encourage use of residential streets for access to the site instead of major streets.

Access to this site is from South 48th Street, and no residential streets are used to access this site.

(i) All other regulatory requirements for liquor sales shall apply, including licensing by the state.

(j) The City Council may consider any of the following as cause to revoke the special permit approved under these regulations:

(1) Revocation or cancellation of the liquor license for the specially permitted premises; or

(2) Repeated violations related to the operation of the permittee's business.

Planning Commission review and City Council approval is required for this use.

2. DEPARTMENT RESPONSES:

POLICE: The Police Department finds that the mitigation plan still shows the licensed premises to be within 100' of a residence and a residential district. Based upon this distance the Police Department is recommending denial. The review goes on to state that they understand that the mitigation plan can be approved at the discretion of the Planning Director.

PUBLIC WORKS: Public Works has no objection to this request.

CONDITIONS:

Site Specific:

1. After the applicant completes the following instructions and submits the documents and plans to the Planning Department and the plans are found to be acceptable, the application will be scheduled on the City Council's agenda:
 - 1.1 Revise the mitigation plan to include a note that states the gas island canopy lights will comply with City of Lincoln Design Standards for Parking Lot Lighting.
 - 1.2 Revise the mitigation plan to note the screening fence will be 6' high.
 - 1.3 Revise the mitigation plan and the landscape plan to include a planting schedule that shows one-half the number of trees to be planted as upright junipers that exceed 6' in height, planted in an alternating pattern with deciduous trees, and stating the minimum size of the trees planted is 2 1/2" caliper.
2. This approval permits the sale of alcohol for consumption off the premises at the convenience store located at 5240 South 48th Street based upon the mitigation plan.

General:

3. Before receiving building permits:
 - 3.1 The construction plans comply with the approved plans.
 - 3.2 All required parking per LMC Section 27.67.020 must be provided.

Standard:

4. The following conditions are applicable to all requests:
 - 4.1 Before occupying these structures all development and construction is to comply with the approved plans.
 - 4.2 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
 - 4.3 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.

- 4.4 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.

Prepared by:

Brian Will, AICP
Planner
October 15, 2003

OWNER: SAM Properties
PO Box 83089
Lincoln, NE 68501 (402)434-9350

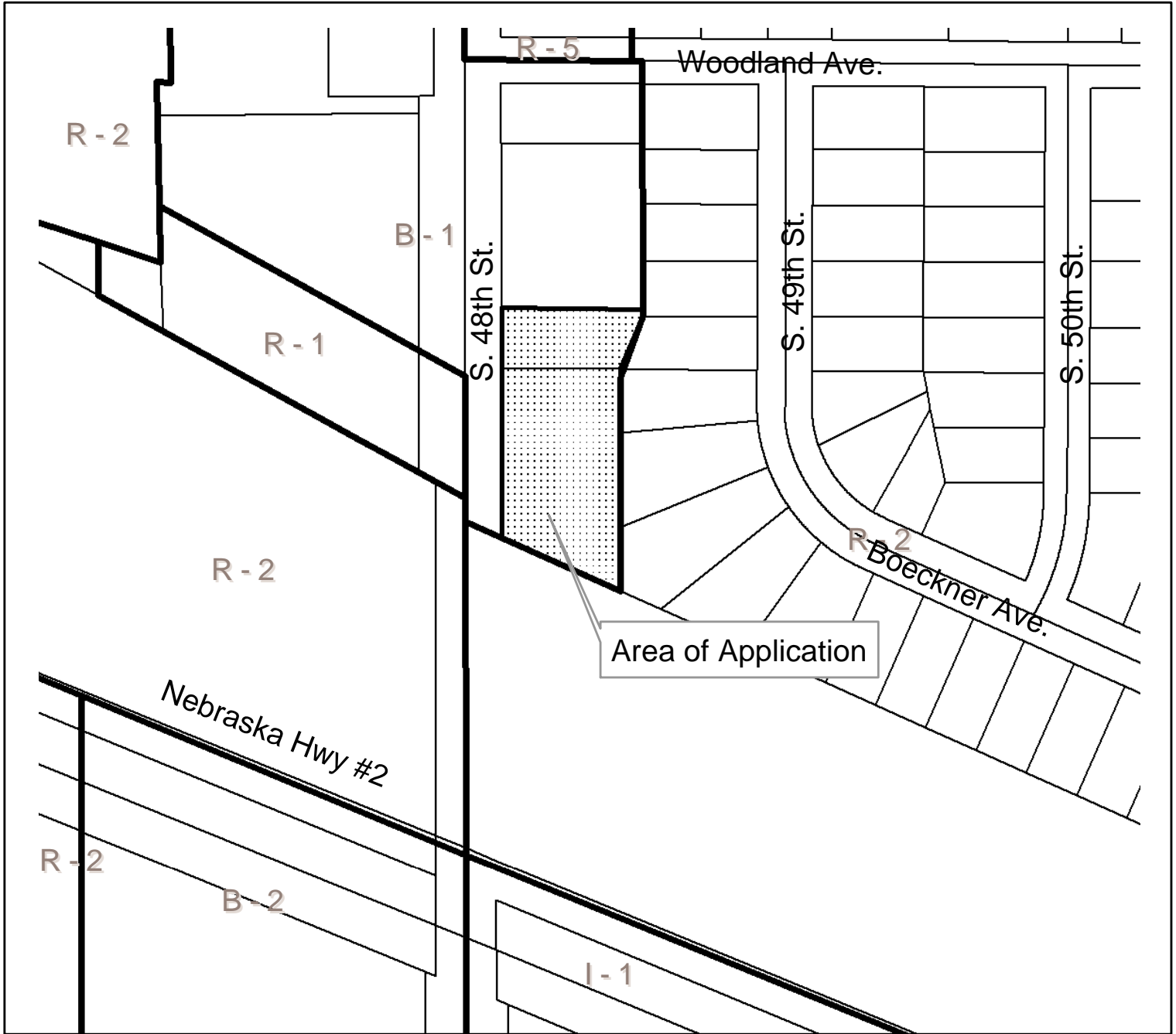
APPLICANT: Mesal Enterprises
PO Box 83089
Lincoln, NE 68501 (402)434-9350

CONTACT: A. Michael Alesio
PO Box 83089
Lincoln, NE 68501 (402)434-9350



Special Permit #2039
S. 48th St. & Hwy #2



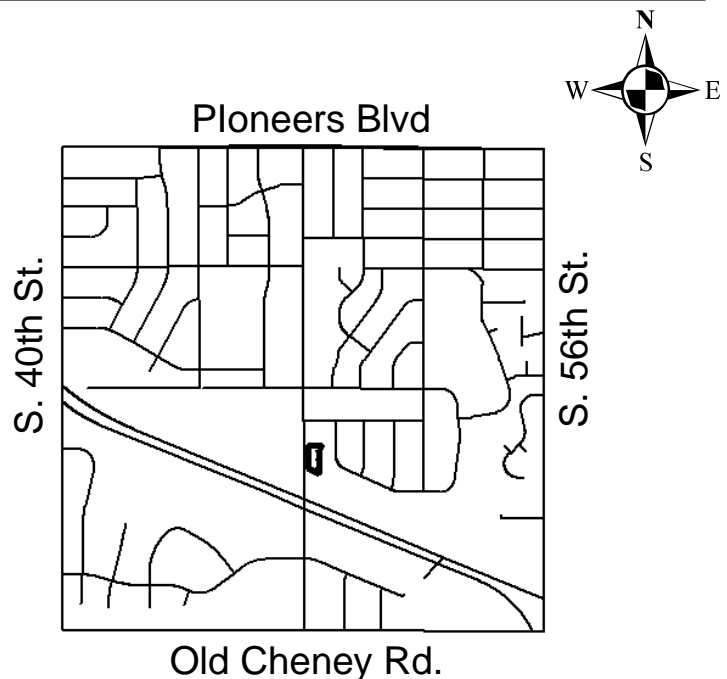
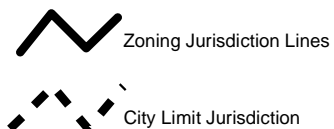


Special Permit #2039 S. 48th St. & Hwy #2

Zoning:

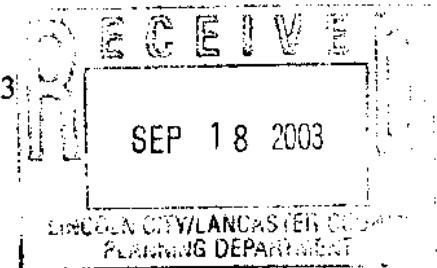
R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile
Sec. 8 T9N R7E



A. MICHAEL ALESIO, Attorney
Box 83089
Lincoln, NE 68501

September 9, 2003



HAND DELIVERED

Director of the Planning Department

Re: Lot 1 and the remaining portion
of Lot 2, Block 5, Woodland
Terrace, Lincoln Lancaster
County, Nebraska

Dear Director:

Please be advised that I represent SAM Properties, Inc., a Nebraska corporation, the "Owner" of the above referenced property and MESAL Enterprises, LLC, a Nebraska Corporation and the special permit applicant "Applicant". Please consider this my certificate that the owner and the applicant have entered a written lease agreement for the entire property described above for a term of years and that said lease agreement is a legal and binding instrument upon the parties for the construction of the building, occupancy of the Premises and operation of the business to be located thereon. Further, I am one of the owners and legal representative of Valentino's of Lincoln, Inc., a Nebraska corporation, which will locate a carryout store next to the convenience stores. There will be a demising wall between the two locations. Valentino's and the owner have entered into a lease agreement for a term of years and such lease is a legal and binding instrument upon the parties for the construction of the building. Valentino's is not an applicant hereunder and the above data is included for information purposes only.

I further certify that all of the above corporations are in good standing in the State of Nebraska.

Thank you for your consideration. Please let me know, if you have any questions.

Very truly yours,

A. Michael Alesio

AMA:sb

MESAL ENTERPRISES, LLC

Box 83089

Lincoln, NE 68501

September 10, 2003

Mr. Marvin Krout, Planning Director
City of Lincoln – Planning Department
555 South 10 Street
Lincoln, NE 68508

RE: On-The-Go Convenience Store

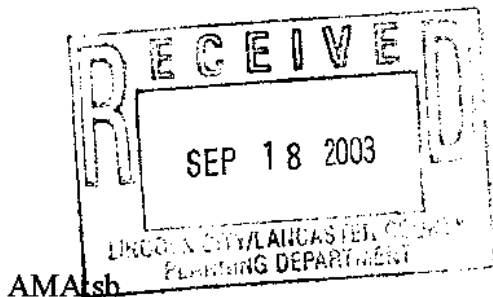
Dear Marvin:

As you are aware, MESAL Enterprises, LLC is developing a full-service convenience store project for the property at 5240 South 48 Street in Lincoln. MESAL shareholders are the same shareholders that hold the stock in Valentino's. We anticipate that this store will serve hundreds of customers per day with a wide range of products. We intend to be open from 6:00 A.M. to 12:00 midnight daily and will employ six to ten people. Our store will include gasoline, convenience and snack items, coffee and fountain drinks, bottles of soft drinks and other beverages, and will include cross-promotion with Valentino's for some hot convenience foods.

We think that an off-sale beer only Class B license fits the needs of our neighbors and allows this MESAL Enterprises, LLC business to operate on a level playing field with other convenience store operators in the immediate area. Included with this letter are the following exhibits:

- Exhibit A – Purpose Statement
- Exhibit B – Mitigation Plan
- Exhibit C – Site Plan (12 copies to scale, 2 smaller format copies)
- Exhibit D - Landscaping Plan (12 copies to scale)
- Exhibit E - Map of Neighbors who have Signed in Support
- Exhibit F – Ownership Certificate

As part of this development, a Valentino's ToGo restaurant is currently planned as a tenant in the adjacent retail bay next to the "On The Go" convenience store. The portion of the facility utilized by Valentino's ToGo at this point in time is not part of the licensed premise for the Class B License. If you have any questions, about this application for a special permit, please do not hesitate to contact me at 402 434-9380.

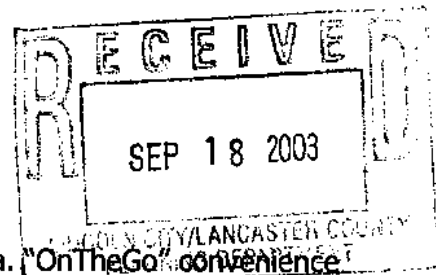


Very truly yours,

MESAL ENTERPRISES, LLC

A. Michael Alesio
Executive Vice-President

EXHIBIT "A"
PURPOSE STATEMENT

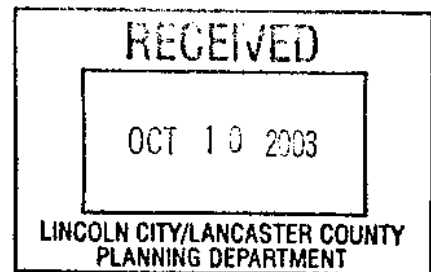


Special Permit Zoning Application of MESAL Enterprises, LLC, d.b.a. "OnTheGo convenience store. The property at 5300 S. 48th Street is zoned B-1. The Building and Safety Department have assigned the address 5240 S. 48th Street to the proposed building for this site. The building (which will house an OnTheGo convenience store and a relocated Valentino's ToGo store) is currently under construction. The Applicant is particularly aware of the requirement of Section 27.63.685 of the Lincoln Municipal Code (LMC) regarding special permits for off-premise alcoholic beverage sales. The following addresses those code requirements.

- (a) The proposed parking plan is in compliance with LMC Section 27.67.020.
- (b) No "on-sale" liquor license is being considered or sought for this site.
- (c) The licensed premise will be within 100 feet of a residential district to the east; thus the request for this Special Permit zoning with mitigation. The construction of this facility will replace a building that was aging on a site that was beginning to fall into disrepair. The site is in an established commercial zone and the only vehicular ingress and egress to the property is via S. 48th street, a high-volume traffic arterial street. The building will face high traffic to the south (Nebraska Highway 2). It has existing commercial property to the north that via a grandfather license already serves on-sale alcohol. To the west is commercial property. The east property line is residential and the proposed building would sit 30'-3" from the east property line.
- (d) All proposed lighting for the site has been designed in accordance with current lighting standards.
- (e) Landscaping, screening and fencing will be used to mitigate adverse effects, if any, of the proximity of the facility to any residential use. This would supplement the tree screening that already exists to the east within the residential property.
- (f) There will be no drive-thru window used as part of the business, and no part of the operation will be conducted on any required building setback.
- (g) No access door to the premises shall violate the requirements of section 27.63.685 as specifically set forth. The only door facing residential is a fire exit door that serves the Valentino's ToGo tenant space; not the proposed licensed premise convenience store.
- (h) The Applicant has worked with the City to only permit vehicular ingress and egress to the property from 48th street. There will be no vehicular access to the property from the neighborhood.
- (I and J) The Applicant understands fully the conditions responsibilities, obligations, and conditions as described.

Additionally, the Applicant will work with the neighbors and City to minimize any impact of the facility on the abutting residential neighborhood. MOST IMPORTANTLY, the applicant has met with and received the endorsement from 100% of the abutting residential property neighbors for this requested Special Permit. They are fully aware of our intentions as noted in this Exhibit A Purpose Statement and with the Exhibit "B" Mitigation Plan as proposed.

EXHIBIT "B"
MITIGATION PLAN



5240 S. 48th Street, Lincoln, Nebraska
Special Permit

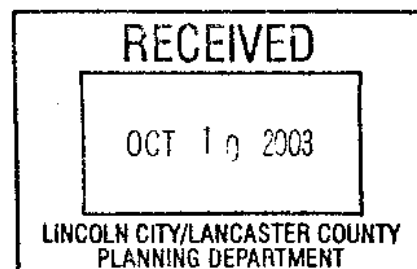
MESAL Enterprises, LLC, d.b.a. "OnTheGo" Convenience Store

1. **SITE PLAN/OPERATION** - The Applicant proposes to mitigate any effect that a new convenience store at this location might have on the abutting residential property owners. The current site plan was a result of much consideration about the effects of lighting, noise, traffic, and exit doors would have on the property to the east. The building is faces south and is located as far west on the property as the 20' front setback requirements permits. (see Exhibit "C" attached)
2. **LANDSCAPING** - The Applicant has proposed new and significant amounts of landscaping throughout the property. Included in the plan are a series of landscaping trees along the east property line to enhance the tree screening currently in existence. Additional landscaping is planned throughout the site as well. (see Exhibit "D" attached)
3. **FENCING** - The Applicant intends to construct and fully maintain a new, 6-foot high, cedar plank privacy fence along the entire east property line and also along the north property line to where the fence would abut the northeast corner of the building. The resulting fence would establish not only a visual and sound buffer, but one that uniquely creates a minimum walking distance to access the store. The presence of a fence on the north creates a walking distance of more than 160' from the northeast corner of the site to the front door of the licensed premise. The distance from the termination of the fence on the southeast corner results in a straight line walking distance of over 250' to the front door

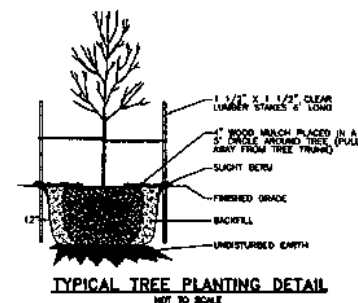
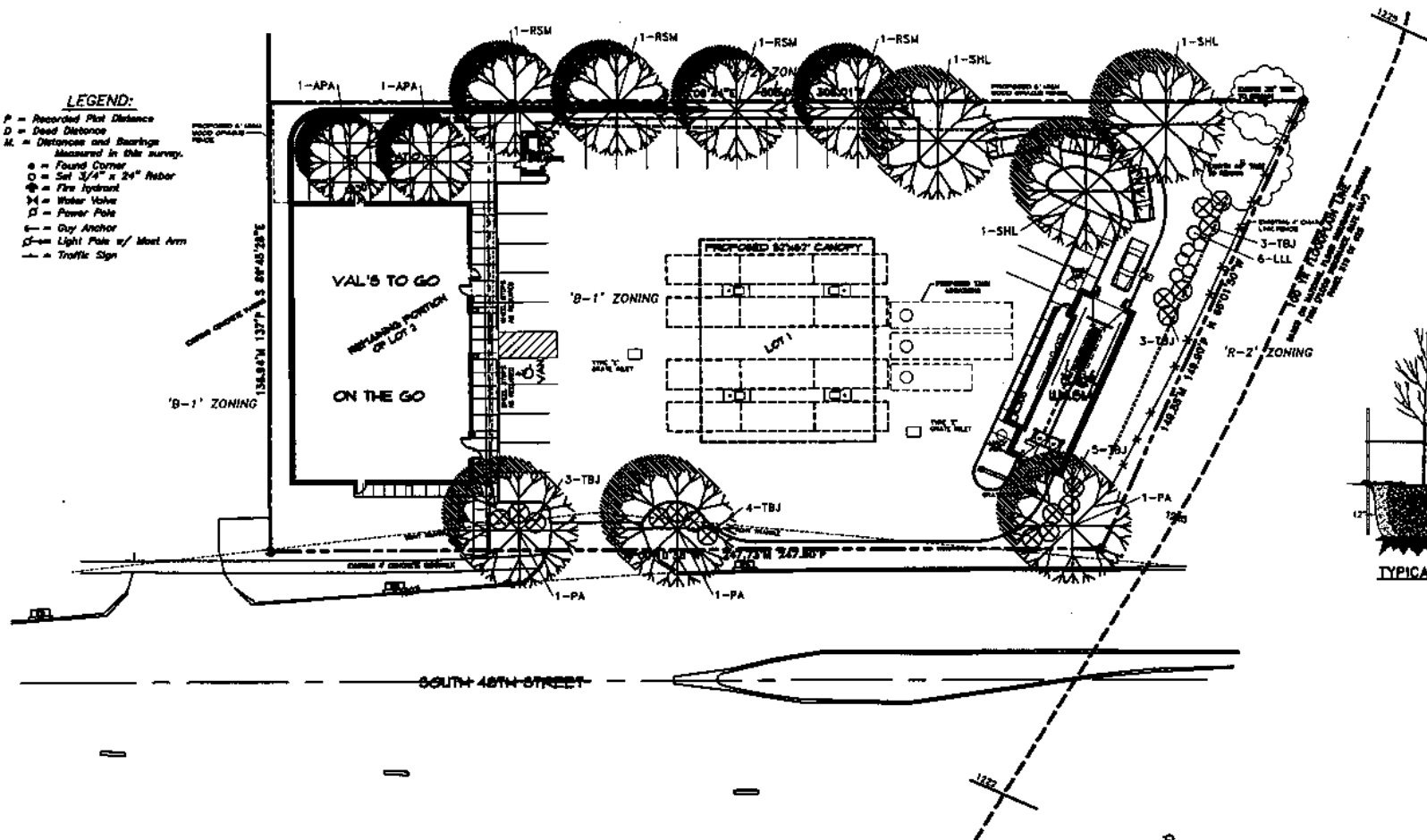
The Applicant is willing to install a taller 8-foot fence in accordance with one of the neighbors' request though a waiver of the 6'-4" maximum height City standard would be necessary to do so. The site also is separated in some areas from the abutting property by a retaining wall. (see Exhibit "C" attached)

4. **SEATING** - Seating is less than 10% of the floor area.
5. **LIGHTING** - The Applicant has taken particular caution in using lighting under the gasoline island canopy that will focus the light where it is needed the most and the least amount to the peripheral areas. The Applicant is sensitive to any light bleed onto the neighboring properties, and that went into the design of the facility and the location of lighting on the lot.
6. **ENTERTAINMENT** - There will be no live entertainment on the premises.
7. **NEIGHBORS** - The Applicant has met with the abutting residential property owners and discussed the reasons for the project and this special permit in detail. We have, in writing, the support of 100% of those residential neighbors. (See Exhibit "E" attached)

8. **REVITALIZATION** – Please remember this site has been deteriorating in condition. The building formerly located on this site has been razed and excavated. The site will be refurbished and the entire property redeveloped to a new and vibrant commercial use.
9. **HOURS OF OPERATION** – The Applicant would agree, as part of its mitigation plan, to limit its hours of operation to between 6:00 a.m. and 12:00 midnight. The Applicant would further agree to limit alcohol sales by ending such sales at 10:00 p.m.
10. **SECURE STORAGE** – All beer products will be stored in a walk-in cooler with glass access doors. The Applicant would agree to physically lock off all beer product from customer access during the hours that beer is not available (hours as defined by statute and the HOURS OF OPERATION mitigation standard listed above) to further limit access.
11. **PRODUCT STORAGE PROXIMITY** – All storage and display of beer product is beyond the 100' setback distance from the east property line of the site (see Exhibit "G" attached).
12. **FRONT DOOR LOCATION** – The entrance door to the convenience store licensed premise is beyond the 100' setback distance from the east property line of the site (see Exhibit "G" attached).
13. **VEHICULAR TRAFFIC CANNOT IMPACT NEIGHBORHOOD** – The only ingress/egress access to this property is from S. 48th street, a main arterial street. In conjunction with the proposed fencing, it is in no way possible to drive from the residential area to this site or vice versa. A vehicle leaving this site and onto a city street would need to travel a minimum of 300 feet to the north to drive onto a neighborhood street to access either an area zoned for residential use or a residential property.
14. **STAFF TRAINING** – The Applicant agrees to train not only the territory supervising manager in a state-approved approved responsible alcohol server/seller training program (as mandated by statute) but also the store general manager and any other manager or supervisor assigned full time to the store. This additional training commitment, though voluntary on the part of the Applicant, would be completed as soon as reasonably practicable after hire; as schedules for classes vary at times throughout the year. At all times, any mandated standards for training would be fully met.



- LEGEND:**
- P = Recorded Plot Distance
 - D = Dead Distance
 - M = Distances and Bearings
 - Measured in this survey.
 - ⊙ = Found Corner
 - = Set 3/4" x 24" Rebar
 - ⊕ = Fire Hydrant
 - ⊖ = Water Valve
 - ⊗ = Power Pole
 - ⊙ = Guy Anchor
 - ⊕ = Light Pole w/ Mast Arm
 - ⊗ = Traffic Sign



BRIAN D.
CARSTENS
& ASSOCIATES

LAND USE PLANNING
RESIDENTIAL
& COMMERCIAL
DESIGN

601 OLD CHIMNEY ROAD
SUITE C
LINCOLN, NE 68511

PHONE: (402) 434-2424
FAX: (402) 434-0457
© 2005 CARSTENS, INC.

DATE:
5/28/03

REVISIONS:
6/18/03
7/11/03



LANDSCAPE SCHEDULE

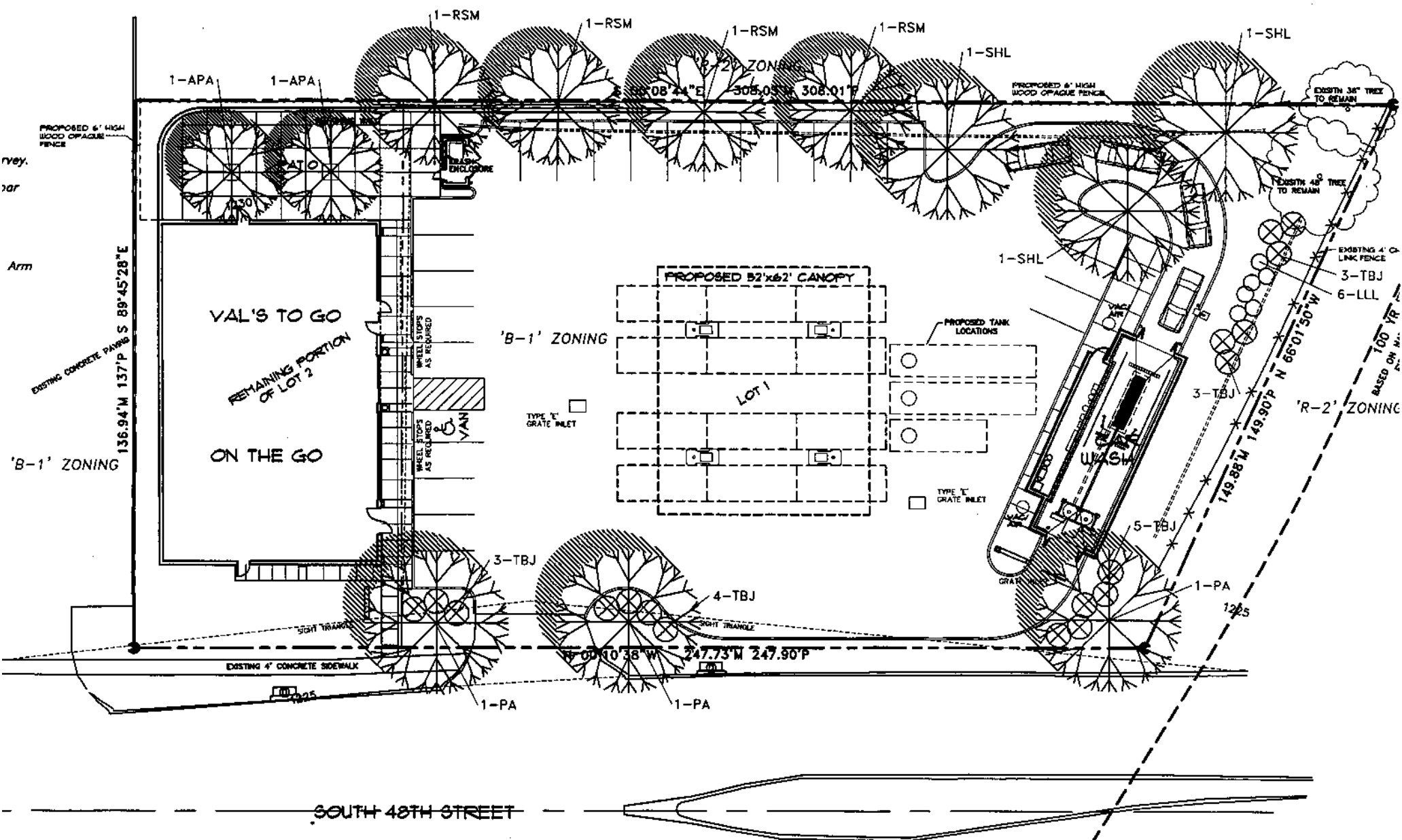
KEY	COMMON NAME / BOTANICAL NAME	SIZE	METHOD	SPREAD	HEIGHT	QUANT
PA	PANORAMA ASP Fraxinus pennsylvanica 'Pendula'	1 1/2" DIA.	B & B	30"	40"	8
RSM	RED BARK MAPLE Acer rubrum 'Red Sunset'	1 1/2" DIA.	B & B	30"	30"	4
SHL	SHYAM HONEYLOCUST Gleditsia triacanthos 'Inversa'	1 1/2" DIA.	B & B	30"	30"	8
APA	AURORA PRINCE ASH Fraxinus americana 'Aurora Prince'	1 1/2" DIA.	B & B	30"	40"	3
TBJ	TALENTED BLUE JASMINE Jasminum canadense 'Talent Blue'	10" DIA.	B & B	6"	4"	16
LL	LIVIDUS LILAC Syringa oblata	2" - 3"	B & B	4"	4"	4

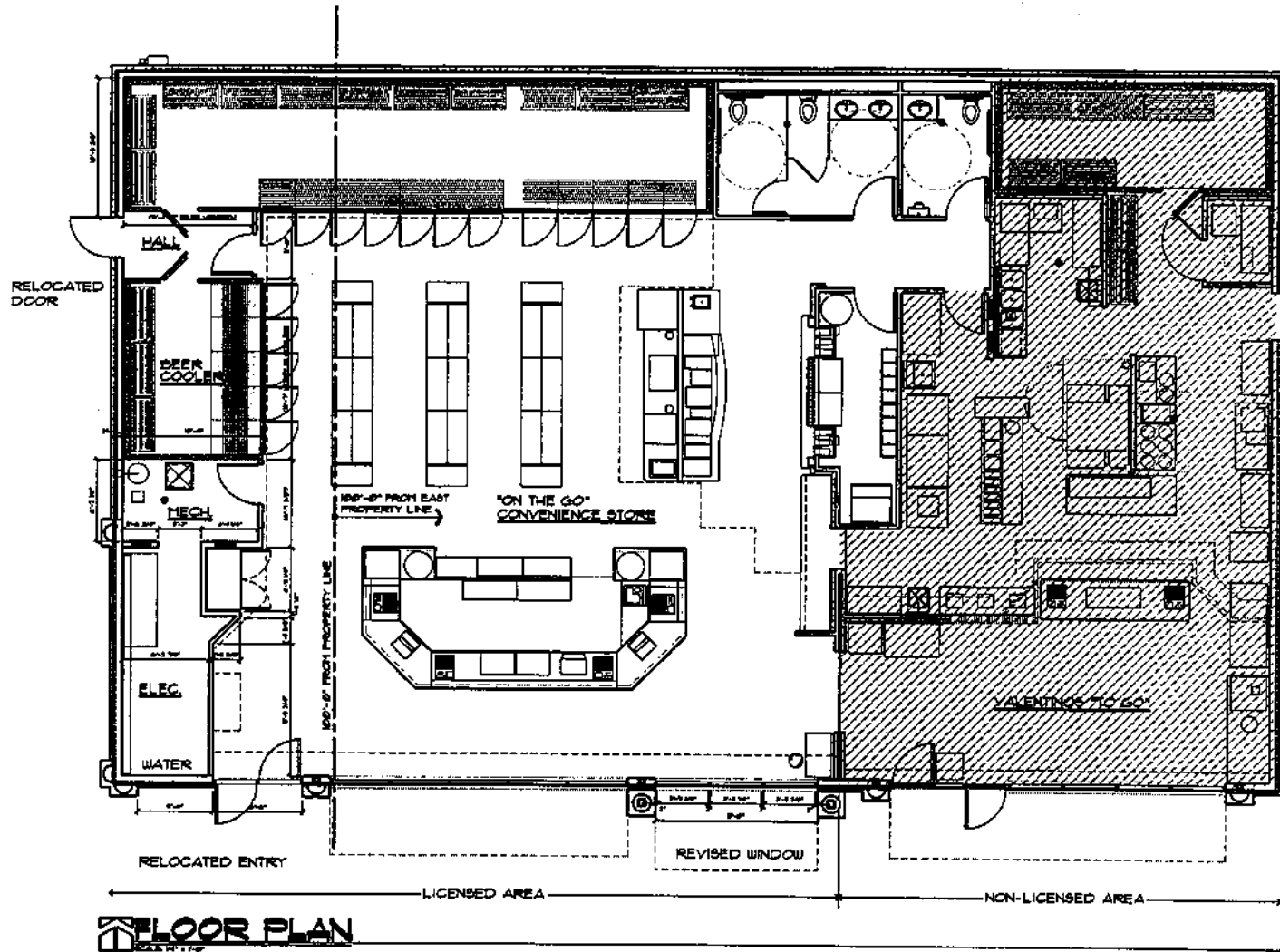
DIAL BEFORE YOU DIG. CALL 1-800-331-5686
FOR LOCATION OF UNDERGROUND TELEPHONE,
ELECTRIC, GAS MAINS, CABLE AND CITY OF
LINCOLN UTILITIES

LANDSCAPE PLAN
SCALE: 1" = 20'



EXHIBIT D



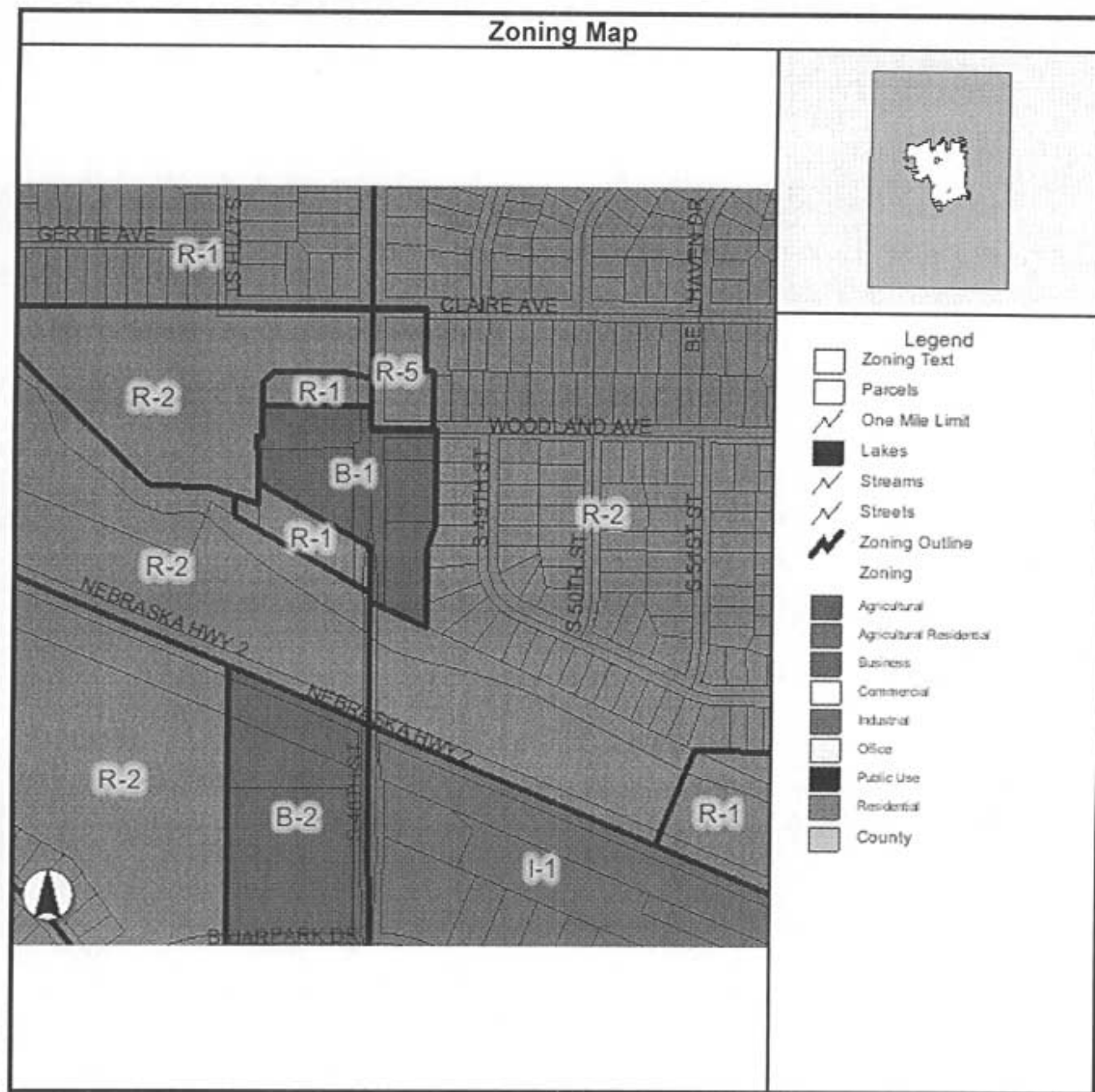


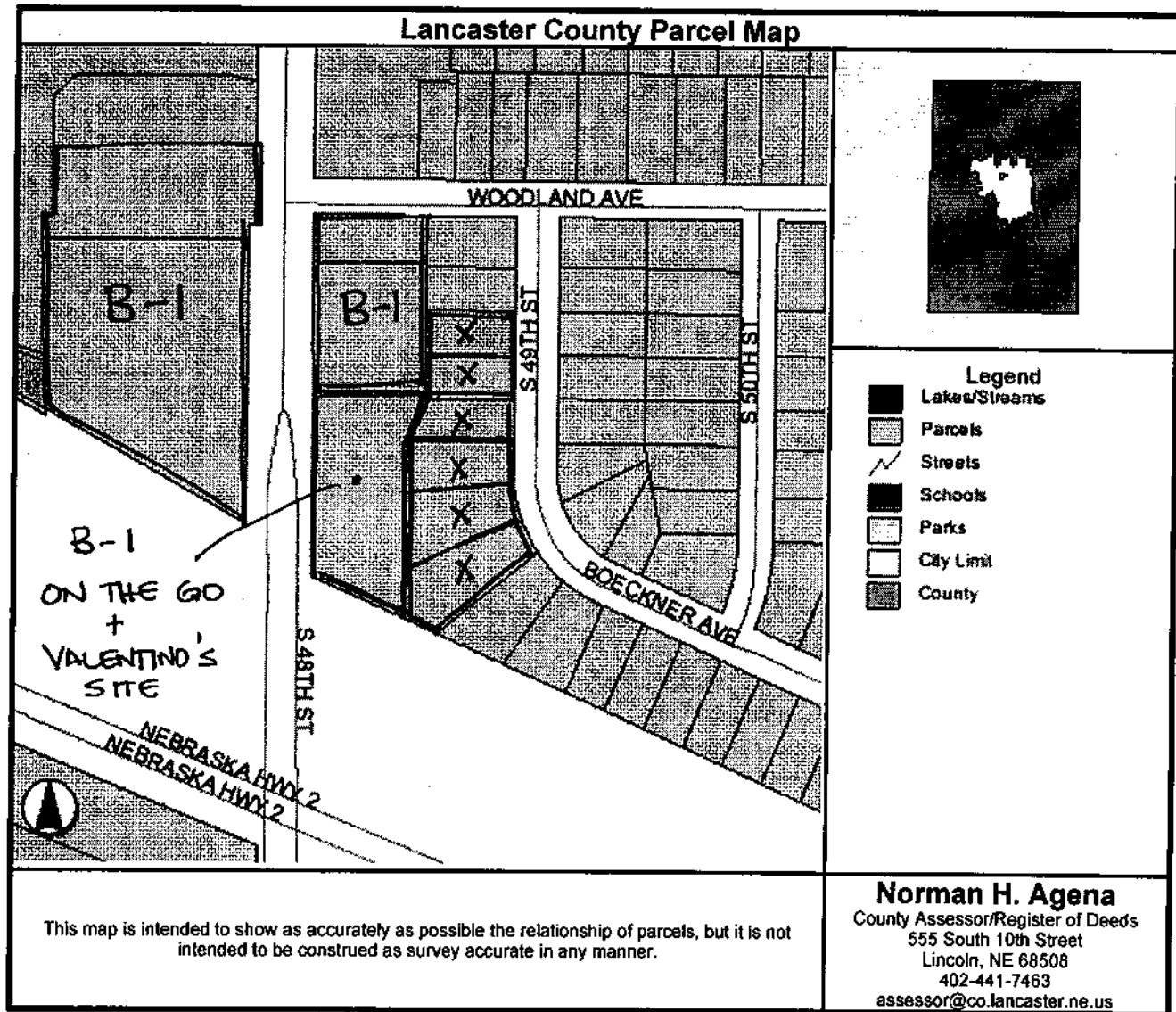
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OCT 10 2003

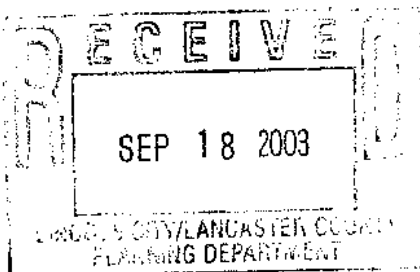
LINCOLN CITY/LANCASTER COUNTY
PLANNING DEPARTMENT

EXHIBIT "G"





X = INDICATES APPROVAL IN WRITING
 FROM PROPERTY OWNERS WITH
 ABUTTING R-2 ZONING



5221 S. 49TH ST.
 5231 S. 49TH ST.
 5241 S. 49TH ST.
 5251 S. 49TH ST.
 5261 S. 49TH ST.
 4901 BOECKNER AVE.

LIST OF ADJOINING RESIDENTIAL PROPERTY OWNERS

		PHONE	STATEMENT OF UNDERSTANDING WITH APPROVAL RECEIVED?
5221 S. 49th Street	Emerson, Do Hwa & John	488-5807	YES
5231 S. 49th Street	Beran, Joe & Gayle	488-5735	YES
5241 S. 49th Street	Jacobs, John	489-8377	YES
5251 S. 49th Street	Henning, Ronald & Carolyn	489-2471	YES
5261 S. 49th Street	Fago & Associates LLC		YES
4901 Boeckner Ave.	Kraft, Timothy & Ellen	483-9255	YES

